

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB's 1940 & 2636

SPONSOR: Regulated Industries Committee and Senators Geller and Constantine

SUBJECT: Arcade Amusement Centers

DATE: March 25, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 849.161, F.S. by providing that:

- Amusement games or machines played at arcade amusement centers may be games played *solely* by application of skill.
- Slot machines and games that have an element of chance or unpredictable outcome are not included in the games permitted at arcade amusement centers and truck stops.
- Points or coupons received from playing the amusement games may not be exchanged for cash, alcoholic beverages, or tobacco products.
- All points or coupons received by a player of an amusement game or machine may be exchanged only at the same business location where the game or machine operated by the player is located. No points or coupons received by a player may be exchanged for any gift certificate, mail order certificate, or similar conveyance which is redeemable at another business location or is deliverable from a location other than where the arcade is located.
- Local governments may establish or amend the zoning map designation of a parcel or parcels of land or change the actual list of permitted, conditional, or prohibited uses within a zoning category and, with respect to arcade amusement centers, any local government may exercise such power as provided by law.
- The legislative and governing body of a county or municipality shall have the power and authority to limit the number of hours of operation of arcade amusement centers and may also limit the number of machines allowed in such centers.
- Games or machines that may be construed as a gambling device under state law are prohibited at arcade amusement centers.

This bill substantially amends section 849.161, Florida Statutes.

II. Present Situation:

Arcade amusement centers having coin-operated amusement games or machines are exempted from the prohibitions on gambling under ch. 849, F.S., as long as the games are games of skill.^{1 2} An arcade amusement center as used in s. 849.161, F.S. means a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility.³ The person playing or operating the game or machine is entitled to receive points or coupons which may be exchanged for merchandise only. Merchandise does not include cash and alcoholic beverages. The cost value of the merchandise or prize awarded in exchange for such points or coupons may not exceed 75 cents on any game played.⁴

Many adult arcade establishments have opened around the state. These establishments have machines resemble the traditional slot machines, but allow the players to stop the circling slots at a certain time and win. The players win gift certificates that can be redeemed at local stores and supermarkets. In many cases the certificates can be redeemed for both merchandise and cash.⁵

In November 2003, law enforcement officials closed eight adult arcade establishments in Volusia and St. Johns counties and confiscated 400 machines as gambling devices.⁶ The defendants in that case accepted a plea agreement to lesser charges after the circuit judge had ruled that the machines were games of chance, the skill level needed was “minimal” and other violations of ch. 849, F.S.⁷ Law enforcement agencies have closed down adult arcades in Pinellas County, Hillsborough County, Panama City, and Sarasota.⁸ In Sarasota, the Circuit Court dismissed similar charges and held ss. 849.01 and 849.15, F.S., unconstitutionally vague when read in conjunction with s. 849.161(1)(a)1., F.S.⁹

Municipalities have either placed moratoriums on occupational licenses for adult arcades¹⁰ or provided zoning restrictions on where adult arcades can be located.¹¹

¹ Coin-operated games of chance (also known as slot machines) are not exempted. See s. 849.16, F.S.

² There is a pending appeal in the 2d DCA challenging a lower court ruling that found, in part, that ss.849.01 and 849.15, F.S. are unconstitutionally vague when read in conjunction with s. 849.161(1)(a)1., F.S. *State of Florida v. Mark Cyphers, Donna Mckinney*, (2d DCA) Case No. 2D03-1272. In 1995, the Attorney General opined that under s. 849.161, F.S., the playing of an amusement game or machine does not appear to require that the outcome of the game be dependent solely on skill, though skill must be a factor. Fla. AGO 95-27.

³ Section 849.161(2), F.S.

⁴ Section 849.161(1)(a) 1., F.S.

⁵ Brief of Appellant, *State v. Cyphers*, No. 2D03-1272 (Fla. 2^d DCA).

⁶ Cindy F. Crawford, November 8, 2003, “Officials Swoop In, Close Adult Gaming Arcades, 400 Machines Carted Away for Inspection,” *Daytona Beach News-Journal*, 1A.

⁷ Cindy F. Crawford, January 17, 2004, “Plea Deal Keeps Casino Arcades Shuttered for Now,” *Daytona Beach News-Journal*, 1A. *State of Florida v. Michel Delorne*, Case No. 2003-35783CFAES, Seventh Judicial Circuit.

⁸ See *supra*, note 2.

⁹ *State v. Cyphers*, No. 2002 CF 5480 (Fla. 12th Cir. Ct. Feb. 18, 2004). The court held that the statutes do not provide adequate notice of the conduct it prohibits when measured by common understanding and practice and that s. 849.161(1)(a)1., F.S., does not adequately inform the defendant how much skill a game must have to qualify for the exemption provided in the section.

¹⁰ Cindy F. Crawford, November 5, 2003, “Moratorium on Arcades OK with Council,” *Daytona Beach News-Journal*, 1A, where the Edgewater City Council established a six-month moratorium on occupational licenses for adult arcades. The City of Lauderdale Lakes adopted a 60-day moratorium. Toni Marshall, March 19, 2004, “Lakes Nixes New Adult Arcade Centers, 60-Day Moratorium in Place Until City Can Pass New Rules,” *Sun-Sentinel*, Community News1

Also excluded from this exemption are those coin operated amusement games or devices designed and manufactured only for amusement purposes which by application of skill entitle the player to replay the game or device at no additional cost, if the game or device:

- can accumulate and react to no more than 15 free replays;
- can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay;
- can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in 24 U.S.C. s. 1171, which requires identification of each device by permanently affixing seriatim numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded from applicability of the chapter under s. 1178.

III. Effect of Proposed Changes:

The bill amends s. 849.161(1)(a)1., F.S., to provide that at arcade amusement centers, the amusement games or machines may be games or machines played *solely* by application of skill. The bill excludes slot machines or devices that have an element of chance or other unpredictable outcome that entitles the player to money, credit, allowance, or thing of value or additional chance or right to use the machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value¹² from the games permitted at arcade amusement centers.

Tobacco products or coupons redeemable for cash, alcoholic beverages, or tobacco products are excluded from the type of merchandise a player is entitled to receive in exchange for the points or coupons the player receives after playing the amusement game at an arcade amusement center.

The bill provides that all points or coupons received by a player may be exchanged for the specific product only at the same business location where the game or machine operated by the player is located. Points or coupons received by a player may not be exchanged for any gift certificate, mail order certificate, or similar conveyance that is redeemable at another business location or deliverable from a location other than where the arcade is located.

The bill amends s. 849.161(1)(b), F.S to provide that the amusement games or machines may be games played *solely* by application of skill. The bill excludes slot machines or devices that have an element of chance or other unpredictable outcome that entitles the player to money, credit, allowance, or thing of value or additional chance or right to use the machine or device, or to receive any check, slug, token or memorandum entitling the holder to receive any money, credit, allowance or thing of value¹³ from the games permitted at arcade amusement centers and truck stops.

¹¹ Millie Lapidario, March 20, 2004, "City Sets Adult Arcade Regulations," *Daytona Beach News-Journal*, 3A

¹² Section 849.15, F.S.

¹³ *Id.*

The bill creates s. 849.161(1)(c), F.S., to provide that nothing in the subsection shall be taken or construed to abrogate or limit the power of a local government to establish or amend the zoning map designation of a parcel or parcels of land or change the actual list of permitted, conditional, or prohibited uses within a zoning category and, with respect to arcade amusement centers, any local government may exercise such power as provided by law.

The bill creates s. 849.161(2), F.S., to provide that the legislative and governing body of a county or municipality shall have the power and authority to limit the number of hours of operation of arcade amusement centers and may also limit the number of machines allowed in such centers.

The bill creates s. 849.161(4), F.S., to provide that a game or machine that may be construed as a gambling device under state law, including video poker games or a game or device that resembles a gambling device as defined in ch. 24 of Title 15 U.S.C. under s. 1171, is prohibited at arcade amusement centers.

Nonsubstantive conforming changes are made to correct a federal statutory citation from 24 U.S.C. s. 1171 to chapter 24 of Title 15 U.S.C. under s. 1171 in s. 849.161(1)(a)2. and (b), F.S.

The bill provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
